

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES NEWMAN,  
Petitioner,  
vs.  
RICHARD KIRKLAND, Warden,  
Respondent.

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No. C 05-00343 JW (PR)

ORDER DENYING PETITION FOR  
A WRIT OF HABEAS CORPUS

**United States District Court**

Petitioner, a California state prisoner currently incarcerated at the Corcoran State Prison, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging he was deprived of half-time credits in violation of due process. The Court found the petition, liberally construed, stated a potentially cognizable claim under § 2254 and ordered respondent to show cause why the petition should not be granted. Respondent filed an answer and petitioner filed a traverse.

**BACKGROUND**

Petitioner alleges that for the period August 13, 2002 to December 10, 2003,

1 he was placed on the full time job waiting list. Petitioner claims that being on the  
 2 waiting list entitled him under California law to receive three months sentence credit  
 3 for every six months served, or in other words half-time credit, but that he was not  
 4 given such credit.

5 Petitioner alleges that he exhausted his administrative remedies. He also  
 6 claims that he filed a state habeas petition with the California Supreme Court, which  
 7 was denied on December 15, 2004. Petitioner filed the instant federal habeas  
 8 petition on January 25, 2005.

### 10 DISCUSSION

11 State prisoners who wish to challenge the computation of their time credits  
 12 must do so in a petition for a writ of habeas corpus, because a favorable  
 13 determination of the claim would likely result in entitlement to an earlier release.  
 14 See Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997); Young v. Kenny, 907  
 15 F.2d 874, 876-78 (9th Cir. 1990); see also Ramirez v. Galaza, 334 F.3d 850, 858-59  
 16 (9th Cir. 2003) (noting where claim, if successful, would “necessarily” or “likely”  
 17 accelerate prisoner’s release on parole, claim is properly brought by way of habeas

18 **United States District Court**  
 19 San Jose, California

20 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
 21 person in custody pursuant to the judgment of a State court only on the ground that  
 22 he is in custody in violation of the Constitution or laws or treaties of the United  
 States.” 28 U.S.C. § 2254(a).

23 Respondent is correct that petitioner’s claim that he is entitled to receive  
 24 credits under California law is not cognizable in a federal habeas petition. A writ of  
 25 habeas corpus is available “only on the basis of some transgression of federal law  
 26 binding on the state courts.” Middleton v. Cupp, 768 F.2d 1083, 1085 (9th Cir.


1 1985). It is unavailable for violations of state law or for alleged error in the  
 2 interpretation or application of state law. See Estelle v. McGuire, 502 U.S. 62, 67-  
 3 68 (1991). Here, as noted, petitioner alleges that state officials have misapplied state  
 4 law in calculating work credits.<sup>1</sup>

5 Accordingly, as the petition does not claim a violation of federal law, the  
 6 petition is hereby DISMISSED for failure to state a cognizable claim for federal  
 7 habeas relief. See 28 U.S.C. § 2254(a).

### 8 CONCLUSION

9  
 10 The petition for a writ of habeas corpus is DISMISSED for failing to state a  
 11 cognizable claim for federal habeas relief under 28 U.S.C. § 2254(a).

12  
 13  
 14 DATED: June 1, 2007

  
 15 JAMES WARE  
 16 United States District Judge

17  
 18 United States District Court

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 25 <sup>1</sup> Petitioner's claim still fails on the merits as it appears from the record of his  
 26 administrative appeals that petitioner was in fact given the half-time credits, i.e., one  
 27 day of credit for each two days served, which he claims he did not receive. See  
 28 Computation Review Hearing Decision (Pet. Ex. G, February 20, 2003); see also  
 Director's Level Appeal Decision (Pet. Ex. J, May 12, 2003).